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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS EUGENE STEVENS,

Defendant and Appellant.

B234700

(Los Angeles County
Super. Ct. No. BA361777)

APPEAL from a judgment of the Superior Court of Los Angeles County,
William N. Sterling, Judge. Affirmed.

Alex Green, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Marcus Eugene Stevens appeals from the judgment entered following his plea of no contest to two counts of first degree, residential robbery (Pen. Code, § 211)¹ and his admission that he personally used a firearm during the offenses (§ 12022.53, subd. (b)). The trial court sentenced Stevens to 14 years in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

a. William Overvold

At approximately 11:30 p.m. on September 4, 2009, William Overvold was inside the apartment of an acquaintance located at 6828 De Longpre in the City of Los Angeles. Some friends, Sano Soren, Monica Jines and Veronica McCall, were also there. While inside, Overvold received a phone call and he decided to take it outside. He excused himself and, while talking on the phone, was pacing in front of the building.

As Overvold was walking, a man approached him from the left hand side, pulled out a small black gun and said, “ ‘Give me that shit now. Give me that phone now. Give it to me immediately.’ ” Overvold, who was “shocked,” “caught off guard” and “surprised,” said “ ‘No.’ ” He initially thought that the man was participating in some kind of a prank. However, once he saw the gun, he felt afraid and thought he “could potentially be killed.” After the man took Overvold’s phone, he shoved Overvold toward the door leading into the apartment and Overvold went inside. He wanted to see the robber so that he could identify him.

Once inside, the robber ordered everyone to get down onto the floor, then to “hand over” their belongings. Since he had already taken Overvold’s phone, the robber went and stood over Soren. He took Soren’s “cell phone, his electronic device [and] his wallet.” When the robber held the gun on Jines, she handed him her cell phone and small purse. He then approached McCall. When she told the robber that “she didn’t have

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The facts have been taken from the transcript of the preliminary hearing.

anything on her” and that her belongings were somewhere else in the apartment, he pointed the gun at her, but did not hurt her.

Throughout the entire episode, Overvold was “in fear for [his] life.” He did, however, notice that the robber was wearing a black or dark brown “du-rag” as well as “an oversized hoodie.” He was also wearing an “oversized [dark blue, zip up] sweatshirt, oversized jeans” and “casual tennis shoes.” According to Overvold, the robber was approximately 5 feet 10 inches tall and weighed approximately 150 or 160 pounds. He was of average build, although a bit on the thin side.

Approximately 15 days after the robbery, Overvold was shown two “six-packs,” or groups of six photographs. When he looked at the first one, Overvold was able to narrow it down to two photographs. He then picked one and indicated that he was “90 plus percent” certain that it depicted the robber. When he viewed the second six-pack, the same thing happened. Overvold narrowed it down to two photographs, then indicated that he was “more sure,” although not 100 percent, that one was the robber.

2. Veronica McCall

Veronica McCall was at an apartment with Soren, Jines and Overvold on the night of September 4, 2009. At approximately 11:50 p.m., Overvold, who had been outside making a phone call, walked into the apartment with an “African-American male.” When asked to identify the man, McCall indicated that Stevens had been the man who had followed Overvold inside. She described Stevens as approximately 6 feet 1 inch tall, wearing a black or gray pull-over hoodie with a black “du-rag” on his head and dark blue jeans. His hair was “off-black” and he was “medium skinned.” He had a “little scruff” of facial hair along his jaw line.

Once he was in the house, Stevens told everyone to “get on the floor.” Within seconds, everyone had complied with the order. When he then moved in a bit closer to McCall, she realized that Stevens had a gun. He then “proceeded to ask for personal belongings from everyone.”

After Overvold gave to Stevens his I-phone, he handed to Stevens the case that went with it. Stevens asked Overvold what it was and, when Overvold told him that it

was the case for the phone, Stevens “flicked it back in the direction of [Overvold] and told him, ‘You would have gotten popped for this.’ ”

Stevens moved over to where McCall and Jines were lying on the floor and asked them, “ ‘Don’t you all have purses?’ ” McCall told Stevens, “ ‘No, we don’t have purses. We are on our way to going somewhere so we didn’t bring any purses.’ ” After picking up Jines’s cell phone from the floor, Stevens pointed the gun at Soren, picked up Soren’s wallet, then “proceeded out the front door.”

After Stevens left the house, McCall called the police.

3. *Monica Jines*

At approximately 11:50 p.m. on September 4, 2009, Monica Jines was in an apartment at 6828 De Longpre Avenue in Los Angeles. She was with McCall, Soren and Overvold.

At some point Overvold went outside to make a phone call from his cell phone. When he came back into the apartment, Overvold was being followed by Stevens. Jines was “shocked” because Stevens was carrying a small, black gun. Stevens told everyone to get down onto the floor and each one of the four individuals complied with the order. Stevens then asked each person for his or her personal items. When Overvold hesitated to give Stevens his wallet, Stevens pointed the gun at him and told him that “if he didn’t give [it to] him—if he kept playing like that, he[,] [Stevens,] was going to shoot [Overvold.]” At that point, everyone in the room was “really scared and [they] kept yelling and telling [Overvold] to give it to him[.]”

Stevens then approached Soren and took his wallet and cell phone. After that, Stevens walked toward Jines and McCall and, while he pointed the gun at Jines, told her to give him whatever she had. “[T]errified” and “afraid for [her] life,” Jines gave to Stevens her cell phone. When McCall had nothing to give to Stevens, he acted as though he did not believe her. As he pointed the gun at her, she explained to Stevens that they had been planning on going out and were not going to take anything with them. After a moment, Stevens took the items he had collected and left the apartment.

4. Beverly Hills Police Officer Nancy Lanoy

At approximately 12:17 a.m. on September 5, 2009, Beverly Hills Police Officer Nancy Lanoy was in uniform and driving a marked, black-and-white patrol car west on Santa Monica Boulevard toward Avenue of the Stars. As she approached Avenue of the Stars, Lanoy saw a beige Kia with two occupants and license plate 6GXZ470. Lanoy had just received information regarding the vehicle and, when she saw it, she requested additional patrol cars to respond to the location. In the meantime, Lanoy followed the Kia as it continued driving south.

After having been joined by other patrol cars, Lanoy activated her lights and siren in an attempt to stop the Kia at the intersection of Exposition and Sepulveda. However, instead of pulling over, the Kia “accelerated in speed north on Sepulveda.” Lanoy followed the Kia and, at the intersection of Grandalle Avenue and Sardis Avenue, the Kia stopped abruptly, the passenger door opened and the passenger, Stevens, got out of the car with his hands up in the air. The car then took off, continuing south. It then made a left hand turn onto Sardis Avenue. While other patrol cars continued to follow the Kia, Lanoy and at least one other patrol car, stopped where Stevens had gotten out. Stevens was wearing a black, hooded sweatshirt and blue jeans.

Stevens was searched, then ordered to lie on the ground. The search revealed a cell phone, an I-pod, a du-rag and a wallet. After Stevens had gotten down on the ground, an officer found a second cell phone “less than a few feet away” from Stevens. The officer who retrieved the phone reported that, “prior to defendant Stevens lying on the ground, [the officer had not] seen [a] cell phone [there].”

5. Beverly Hills Police Officer Daniel Tanner

Officer Daniel Tanner is the field training officer for the Beverly Hills Police Department. At approximately 12:20 in the morning on September 5, 2009, Tanner received a call asking him to assist Officer Lanoy. She was in pursuit of a stolen vehicle in the area near Westwood and Sepulveda Boulevards. The officer arrived on the scene at the same time that other units arrived and Tanner let Officer Lanoy know that “she was clear to initiate a traffic . . . or felony stop whenever she was ready.” When the Kia made

a right hand turn onto Exposition and headed west, Lanoy and the other officers activated their full light bars and sirens. However, instead of coming to a stop, the driver of the Kia accelerated. The group of police vehicles followed the Kia for approximately 30 minutes as it was being driven at speeds of up to 70 miles per hour in 25-mile per hour zones, through stop signs and red lights and up to 85 miles per hour on the freeway. On several occasions, the Kia would be traveling at a speed of 50 to 70 miles per hour, then go “into a full lock skid[.]” It appeared to Tanner that the driver of the Kia was attempting to make the police vehicles “crash” into each other or the Kia.

While following the Kia, Tanner observed the driver throw from the window a brown T-shirt and a black hooded sweatshirt.³ Another officer told Tanner that he saw the driver discard a dark gray glove.

The beige Kia finally came to a stop in front of 2514 Jefferson. The driver of the vehicle, who was later identified as Magic Brooks, had been circling the area for some time. After he stopped, Brooks simply got out of the car. He was wearing dark pants and a white tank top. When an officer conducted a pat-down search of Brooks for weapons, none was found. Neither did a cursory search of the Kia reveal a gun or any other weapon.

6. Los Angeles Police Officer Ernesto Escoto

On September 5, 2009, Los Angeles Police Officer Ernesto Escoto went to the Beverly Hills Police station where he met with Officer Lanoy. Escoto had previously met with Overvold, who had reported that his cell phone had been stolen. When the two met, Officer Lanoy gave to Escoto a white, Apple I-phone. Officer Escoto called the number that Overvold had given him as that for his cell phone and the I-phone immediately began to ring. In addition, Escoto found a picture of Overvold inside the phone.

³ The shirts were later recovered by other officers.

2. Procedural history

Following a preliminary hearing, on October 8, 2009 Stevens was charged by information with one count of kidnapping to commit robbery (§ 209, subd. (b)(1)) (Count 1), three counts of first degree, residential robbery (§ 211) (Counts 2, 3 & 6), and one count of attempted first degree, residential robbery (§§ 664/211) (Count 4). It was further alleged that, as to the kidnapping, the robberies and the attempted robbery, Stevens “personally used a firearm, a handgun, within the meaning of . . . section 12022.53[, subdivision] (b),” which caused the offenses to become serious felonies within the meaning of section 1192.7, subdivision (c)(8) and violent felonies within the meaning of the Three Strikes law, section 667.5, subdivision (c)(8). The trial court explained that, if he were to be found guilty of all of the charges, Stevens faced a term of 29 years 4 months in prison, of which he would be required to serve 85 percent. The court continued: “[Y]ou’ve got a choice and you’re going to have to make it. You can either take the People’s offer, which is 14 years [in prison], and that’s at 85 percent; or you can reject it and go to trial and roll the dice and see what happens[.]” So that he might make a more informed decision, the trial court gave Stevens the evening to consider it. The trial court stated to Stevens: “Your back is up against the wall and you have to make a decision. I’m not telling you what decision you have to make. That’s up to you. But you either take the deal or go to trial. That’s the bottom line. You have to make a decision . . . and I’ll give you overnight to think about it.” In response, Stevens informed the trial court that he did not “feel comfortable with [appointed counsel] representing [him] because all this stuff that’s happening, it could have been . . . avoided[.]” At that point, the trial court asked the prosecutor to leave the courtroom so that a *Marsden*⁴ hearing could be held.

At the hearing, Stevens indicated that he believed his counsel had been ineffective. Stevens continued: “I’ve been asking him for certain things and all this stuff and things that I needed to know, information. And all of a sudden at the last minute, he pops up

⁴ *People v. Marsden* (1979) 2 Cal.3d 118.

with everything. First he was telling me he thinks he can win the trial, and then he tells me . . . different. [¶] And what type of lawyer is going to ask you a question like ‘Who’s going to take the blame for this?’ That’s crazy to me.” In response, the trial court indicated that it had asked the People if they intended to make an offer and that, as of that time, they had not. The prosecutor then spoke with her supervisor and the present offer was made.

Although Stevens was disappointed that the “offer” was for 14 years, in view of the fact that he faced a term of over 29 years, the trial court determined that the offer of a negotiated 14-year plea bargain did not present grounds for removal of defense counsel. It appeared that defense counsel had acted appropriately in relaying the offer to Stevens and, accordingly, the trial court denied Stevens’s *Marsden* motion.

Before deciding whether to go to trial, Stevens was permitted to ask the prosecutor a number of questions. In response, the prosecutor indicated that Stevens had been charged with what is commonly called a “home invasion robbery,” a crime that jurors generally take “extremely seriously.” In addition, in view of her 22 years of experience, the prosecutor believed that “the evidence . . . presented [was] compelling and [she] . . . would classify” the case as a “strong” one against Stevens. Both McCall and Jines had identified Stevens, not only in photographic line-ups, but in court. Moreover, Stevens had used a gun during the commission of the robberies. Although he did not shoot at anyone, the mere use of a gun required a 10-year enhancement. The prosecutor emphasized that the maximum term available in Stevens’s case was 29 years 4 months. The minimum, if he entered pleas to the robberies alleged in counts 2 and 3, would be 85 percent of 13 years. The People were offering him 85 percent of 14 years “because of the number of victims, plus the mandatory ten [years for the use of a firearm].”

After further discussion, Stevens indicated that he would “take the deal, but [he] want[ed] to know if [he could] postpone [his] sentencing because [he] want[ed] to get married.” The trial court indicated that it would put the matter over for sentencing if Stevens was certain he wished to enter pleas to the robberies alleged in counts 2 and 3. Stevens indicated that he was certain and the following then occurred: “[The prosecutor]:

Sir, you are charged in information BA361777 in count 2, that on or about September 4, 2009, . . . you committed the crime of first degree residential robbery, in violation of . . . section 211[,], as a felony. And you were charged in Count 3 that on or about September 4, 2009, you committed the crime of first degree residential robbery in violation of . . . section 211 as a felony. [¶] As to counts 2 and 3, it is further alleged that . . . that you personally used a firearm, [a] handgun, within the meaning of . . . section 12022.53, subsection (b)” The prosecutor continued: “Now, as I indicated, if you [had been] convicted of counts 2, 3, 4, and 6, the maximum [penalty] would [have been] 29 years and four months. However, the People have agreed [that to each of] counts 2 and 3[,], . . . you will be sentenced to the mid[-]term of 4 years,” the sentences to “run concurrent[ly].” As to the special 10-year firearm allegations, those terms would, as well, run concurrently to each other, for a total sentence of 14 years in state prison. The prosecutor added, “[In addition,] [y]ou must make restitution to the victims in this case for the loss[es] of their individual cell phones.” The prosecutor figured that Stevens would owe approximately \$230. In addition, Stevens was informed that the robberies were violent felonies pursuant to the Three Strikes law, and that, in entering pleas of no contest to the offenses, he would acquire two strikes.

Stevens indicated that he understood the terms of the plea agreement. After then waiving his right to a jury trial, his right to a court trial, his privilege against self-incrimination, his right to confront and cross-examine the witnesses against him and his right to use the subpoena power of the court to present a defense, Stevens pled no contest to the first degree, residential robberies alleged in counts 2 and 3. He then admitted that, during the commission of the robberies, he personally used a firearm. The trial court indicated that the offenses alleged in counts 4 and 6 would be dismissed and the allegations that the offenses were serious and violent felonies would be stricken. After counsel “stipulate[d] to a factual basis for the purpose of [the] plea[s]” based on the transcript of the preliminary hearing and the police reports, the trial court accepted Stevens’s pleas, admissions and waivers and found that they were knowingly,

intelligently and voluntarily made. The trial court found Stevens guilty based on his plea of no contest.

Sentencing was deferred to enable Stevens's girlfriend to obtain a marriage license. It occurred on May 27, 2011. The trial court imposed the mid-term of four years each for counts 2 and 3, the sentences to run concurrently. For Stevens's personal use of a firearm, the court imposed a term of 10 years as to each count, the terms to run concurrently. In total, Stevens was sentenced to 14 years in prison. Stevens was awarded presentence custody credit for 631 days actually served plus 95 days of good time/work time, for 726 days.

The trial court imposed a \$200 restitution fine (§ 1202.4, subd. (b)), a suspended \$200 parole revocation restitution fine (§ 1202.45), a \$30 court facility fine (Gov. Code, § 70373), an \$80 court security fee (§ 1465.8, subd. (a)(1) and a \$10 crime prevention fine (§ 1202.5). Actual restitution in the amount of \$100 was awarded to Monica Jines. Sand Soren was awarded \$130 in restitution.

The People's motion to dismiss all remaining counts and to strike all remaining allegations was granted.

Stevens filed a timely notice of appeal on July 20, 2011.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed January 17, 2012, the clerk of this court advised Stevens to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On January 23, 2012, Stevens filed with this court a letter requesting a 30-day extension within which to file a supplemental brief. In an order filed January 25, 2012, Stevens's request for an extension of time was granted to March 19, 2012. In a letter filed February 28, 2012, Stevens appeared to be requesting that another, different lawyer be appointed to assist him with his appeal. He claimed his lawyer was "ineffective." In an order filed February 29, 2012, this court denied Stevens's request. In a letter filed March 19, 2012, Stevens indicated that he had "looked over [his] case and studied it" and

that he did not feel that he “got a fair chance.” He stated that he “would like to abandon [his] appeal.”

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.